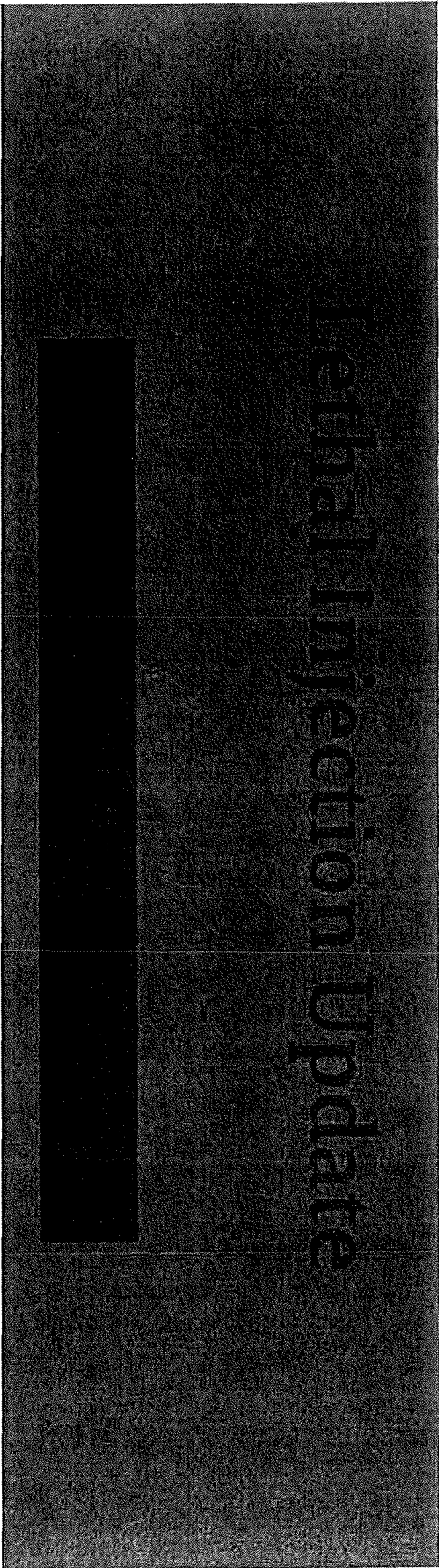


Department of  
**Correction**



August 31, 2017

Lethal Injection Update

**FILED**  
AUG 22 2018  
Clerk of the Appellate Courts  
Filed By \_\_\_\_\_

EXHIBIT# 105  
FILE DATE 7-13-18  
CASE# 18-183-III  
BY: JFS

## Purpose

To provide an overview of the offenders sentenced to death, the current law as it pertains to executions and the efforts made to procure the necessary chemicals to compound the State's Lethal Injection Compound (LIC).

# Population

**As of August 31, 2017**

**Offenders with sentences of death: 60**

**By sex and race:**

59 males and 1 female

30 White, 27 African Americans, 1 Hispanic, 1 Asian

**Where are they from?**

36 offenders are from the largest metropolitan counties:  
Shelby (25), Davidson (6), Knox (5), and Hamilton (3)

16 offenders were convicted in East Tennessee  
11 offenders were convicted in Middle Tennessee  
33 offenders were convicted in West Tennessee

## Dates Scheduled

### 2017 Dates (0):

### 2018 Dates (2):

January 3, 2018

May 9, 2018

Both cases just completed direct appeal and have additional steps in the legal process.

The Law

- T.C.A. § 40-23-114 provides that any person who is sentenced to the punishment of death, that sentence will be carried out by lethal injection with some exceptions such as:
  - A person sentenced to death for an offense committed prior to January 1, 1999 may elect to be executed by electrocution by signing a waiver; OR
  - The TDOC Commissioner certifies to the governor that one or more of ingredients essential to carrying out a sentence of death by lethal injection is unavailable through no fault of TDOC.



The law

Tennessee law further provides that the alternative means of execution **shall** be electrocution if the chemicals for the LIC are unavailable and/or lethal injection is found to be an unconstitutional method of carrying out a sentence of death.

Method

## Tennessee Protocol:

Pentobarbital (Barbiturate) – compounded into an injectable solution. For each execution, there are 2 syringes, each containing a 5 gram compounded solution of Pentobarbital.

## Search for Source

Reached out to [REDACTED], as it was understood that they had a source for Pentobarbital. [REDACTED] was unwilling to either share the identity of their source, or provide our contact information to their source. [REDACTED] was also unwilling to offer any guidance as to how [REDACTED] was able to find its current source.



## Search for Source

000009

1476

- [REDACTED] assigned with task of locating source of Pentobarbital
- First step was to search by contacting compounding pharmacies to determine if they: 1) Had an inventory of Pentobarbital; or 2) Had a source of Pentobarbital and were willing to compound the LIC for the department
- Several pharmacies declined to be involved in any way. Finally, a compounding pharmacy agreed to both compound the LIC and aid in the search for a source.
- Search involved cold calling U.S. based Active Pharmaceutical Ingredient (API) supply companies.

## Search for Source

Collectively, contact was made with close to 100 potential sources, including the 3 major U.S. chemical wholesalers. None of these worked for one or more of the following reasons:

- Company did not have an inventory of Pentobarbital - apprx. 70%
- Company did not have sufficient quantities of the needed form of Pentobarbital and no source to obtain sufficient quantities – apprx. 10%
- Company unwilling to supply Pentobarbital if it was to be used in lethal injection – apprx. 20%

## Search for Source

It appears there is no U.S. based source for Pentobarbital and so the search was broadened into the possibility of importing the chemical from overseas:

- C.F.R. § 1312.13 grants the DEA the authority to issue permits for the importation of schedule II narcotics (i.e. Pentobarbital) when it is necessary to provide for a legitimate need of the U.S. and the domestic supply is inadequate

- [REDACTED]

## Search for Source

- [REDACTED]
- At the meeting, the agents informed [REDACTED] that [REDACTED] because, according to them, there is a supply of pentobarbital available in the United States.
- When told that the companies who do have a supply would not sell their supply for use in lethal injection, the [REDACTED] agents explained that it didn't matter and that it was an issue to take up with the companies themselves.

## Search for Source

In the course of researching the possibility of importation, [REDACTED] became aware of a federal case in Texas wherein the FDA had seized a shipment of drugs/chemicals being imported by the Texas Department of Correction. Texas DOC filed suit in federal district court for the release of the shipment. To this date there has not been any resolution to this case.

[REDACTED] is now researching FDA regulations as a result of this case to determine what if any process can be undertaken to obtain FDA approval for the importation of Pentobarbital. Thus far the approval process appears to be very cumbersome unless an exception can be claimed to lessen the burden.



## Activity in Other States

Other states have had similar difficulty/inability in locating a source for their LIC.

- Arkansas attempted to perform 7 executions in the span of 10 days because their current supply of LIC was set to expire and the State did not have a source for additional LIC chemicals. Arkansas has subsequently obtained a supply of midazolam.
- South Carolina has stated, in connection with the recent conviction of Dylan Roof, that they do not have a supply of LIC and have not been able to find a supply.
- Indiana DOC was reprimanded for not following proper procedure in unilaterally trying to change their protocol to a new LIC due their inability to locate a supply of the current drug.



## Activities of Other States

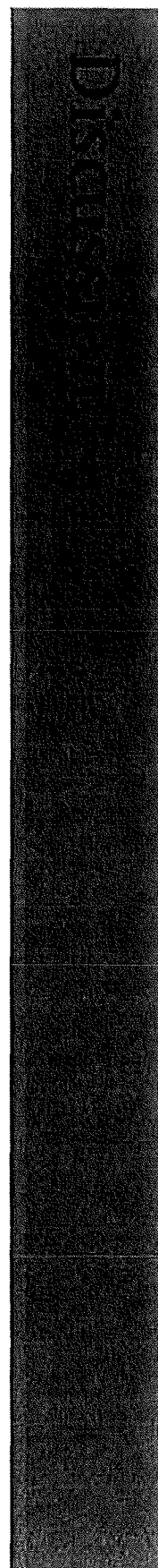
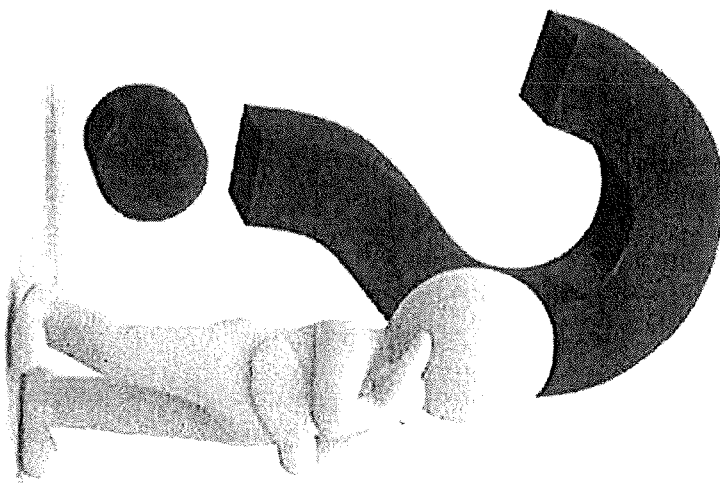
Other states have had similar difficulty/inability in locating a source for their LIC.

- Texas, in the case mentioned before, attempted to import a different LIC chemical than they currently use in executions. Presumably due to the potential unavailability of Pentobarbital even on an international level.
- Some states are using LIC chemicals that have come under harsh scrutiny, such as Alabama's used of Midazolam in the recent execution of Robert Melson.
- Florida is using a drug, etomidate, that has never been used in the United States for execution.

## Additional Info

A few years ago approximately 13 states reached out to the Department of Justice seeking aid in locating a source for LIC chemicals and/or gaining access to any supply that the Federal Government currently had. This did not result in any action by DOJ.

There are circumstances where the Federal Government can step in and orchestrate the supply of chemicals in situations where supply is so low and the cost for the chemical is so high as to make it virtually unavailable where there is a significant need.



000018

Tuesday, Apr 4, 2017

Me

[REDACTED] is there a  
good time for me to give u a holler?

10:06 AM



Good morning [REDACTED] I'll give you a  
call in an hour.

10:07 AM

Me

10-4 Just call this # in case I'm out  
of office thx

10:07 AM



Wednesday, Apr 5, 2017

Me

I'm running around today so not  
sure when I'll be open for a call but  
in the meantime can u send me a  
list of all companies etc u reached  
out to about sourcing so I can have  
it for when we have to show it's  
unavailable? Thanks

8:49 AM



I'm not ignoring you I promise.  
Been getting over a nasty cold. I'm  
working on the list this morning. I'll  
have it to you soon.

9:16 AM

Thursday, Apr 6, 2017

[REDACTED]

Me

10-4 Sorry ur sick in my voicemail I  
had a question about what type of  
pento y'all need cause I'm looking  
into a company and they needed to  
know which kind we wanted



9:17 AM

Me

Would [REDACTED] be available  
for me to ask [REDACTED]?

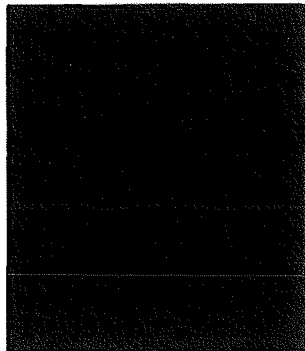


9:27 AM



[REDACTED]  
We would need USP grade.

I've spoken with the following with  
no luck:

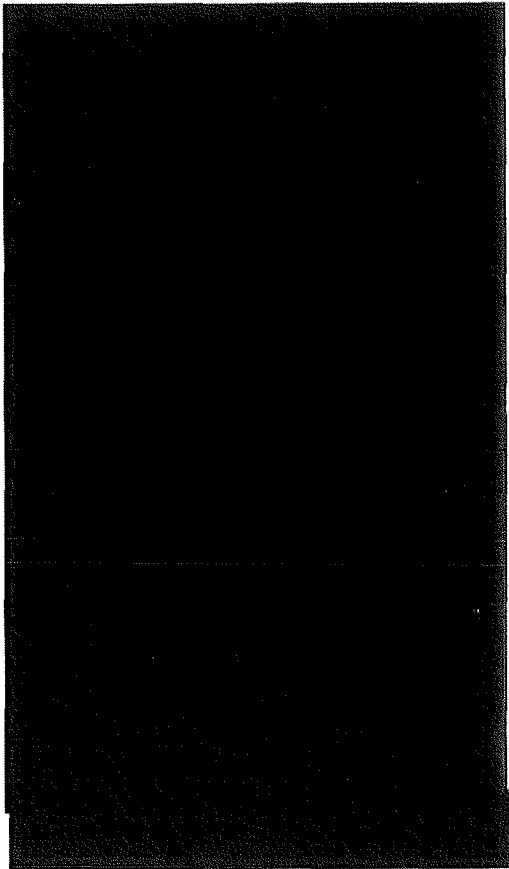


9:52 AM



[REDACTED]

Me



9:55 AM

Me

Can u tell from that pic which of those would work?



9:55 AM



[REDACTED]  
I don't think any of those would work for injection. I'm confirming with [REDACTED]

10:25 AM

Me

10-4

10:25 AM



Generated by GilApps SMSShare 2

000021



Also those are such small quantities.

10:26 AM

Me

Well they do bulk options on things so once [REDACTED] says which one or what specific type we need I'll shoot that to them to see if possible



10:27 AM



If they have a crystalline option that would work. Methanol and ethanol are not injectable

10:33 AM

Me

Ok I've sent inquiry as to USP grade in crystalline form



10:37 AM

Me

Ok no dice with that company



11:03 AM



What are your thoughts on acquiring it through a veterinarian? They sometimes have better access to it since it's widely used for euthanasia in animals.

11:09 AM

Me

How would that even work? I'm wondering how the vet could legally transfer or sell the schedule 2 to y'all



1:02 PM



[Redacted]



[Redacted]

2:28 PM

Me  
Let me do some looking into that  
possibility and talk with the bosses



2:43 PM

--- Thursday, Apr 13, 2017 ---

Me  
U got a free minute this afternoon  
for a call?



11:04 AM



[Redacted]  
Yes sir I do.

11:07 AM

Generated by GilApps SMSShare 2

000023

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Wednesday, February 15, 2017 12:36 PM  
**To:** [REDACTED]  
**Subject:** pharmacy contact

Hi [REDACTED] It's [REDACTED]. Thx, [REDACTED]

[REDACTED]

*Our Mission – To protect, promote and improve the health and prosperity of people in Tennessee.*

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Tuesday, April 04, 2017 10:41 AM  
**To:** [REDACTED]  
**Subject:** RE: Your Inquiry

[REDACTED]

We had an internal discussion and we have to respectfully decline to quote.

Kind regards,  
[REDACTED]



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---

**From:** [REDACTED]  
**Sent:** April-04-17 10:44 AM  
**To:** [REDACTED]  
**Subject:** RE: Your Inquiry

Thank you.



[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, April 04, 2017 8:58 AM  
**To:** [REDACTED]  
**Subject:** RE: Your Inquiry

[REDACTED]

We have not made this compound in the past. I will have our technical team evaluate and let you know if we can develop the synthetic route and GMP manufacture process here.

Kind regards,  
[REDACTED]

[REDACTED]

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**From:** [REDACTED]  
**Sent:** April 04, 2017 9:41 AM  
**To:** [REDACTED]  
**Subject:** RE: Your Inquiry

Here is the requested info:

- 1) Pentobarbital CAS # 76-74-4
- 2) Need at least 100 grams, would be interested in pricing for bulk orders



- 3) We have a compounding pharmacy able to compound the solution they just need the pentobarbital, however would be interested in pricing to compound as well through your organization.

Let me know if there is any other info you need. Thanks for your help.



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**From:** [REDACTED]  
**Sent:** Tuesday, April 04, 2017 8:31 AM  
**To:** [REDACTED]  
**Subject:** Your Inquiry

\*\*\* This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. \*\*\*

Hello [REDACTED]

It was nice speaking with you, and thank you for your interest in [REDACTED] Could you provide the following information:

- Name of the API
- Amount required
- Will it be supplied in bulk, or do you need formulation, sterilization, fill/finish etc?

Kind regards,  
[REDACTED]



THE CHANCERY COURT  
DAVIDSON COUNTY, TENNESSEE

HONORABLE ELLEN HOBBS LYLE, CHANCELLOR

MARIA M. SALAS, CLERK AND MASTER

ABU-ALI-ABDUR'RAHMAN, ET AL  
Plaintiffs/Appellants

FILED

AUG 22 2018

Clerk of the Appellate Courts  
Rec'd By \_\_\_\_\_

VOLUME 11 of 19

CERTIFIED  
TRANSCRIPT  
OF  
Cause

Appearance No. 18-183-III  
CHANCERY COURT

Vs

No. M2018-01385-SC-RDO-CV

SUPREME COURT

TRANSMITTED ON:

August 21, 2018

Execution No.  
SUPREME COURT

APPEALED  
TO  
Next Term,  
20

TONY PARKER, IN HIS OFFICIAL CAPACITY AS TENNESSEE COMMISSIONER OF  
CORRECTION, ET AL  
Defendants/Appellees

Trial Exhibits 106 - 116

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Exhibit # 105 - continued

Contains 11

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, April 06, 2017 11:00 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Inquiry

Dear [REDACTED]

The products we sell are isotopically labeled and used as internal standards for analytical purposes. The concentrations noted below are micrograms/ ml.

We are unable to provide the quantity you need.

Thank you for your inquiry.

---

**From:** [REDACTED]  
**Sent:** Thursday, April 06, 2017 10:37 AM  
**To:** [REDACTED]  
**Subject:** FW: Inquiry

[REDACTED]

Word I am getting from pharmacist is that we would need "USP" grade and [REDACTED] is asking if the Pentobarbital comes in a crystalline form for bulk orders to be used to compound? Thanks

[REDACTED]

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---

**From:** [REDACTED]  
**Sent:** Thursday, April 06, 2017 9:19 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Inquiry

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Hi [REDACTED]

As discussed over the phone, please see below for the different item numbers and descriptions. Also copied to this email is our [REDACTED] to assist with your questions.

[REDACTED] PENTOBARBITAL, (ETHYL-D5, 98%)  
[REDACTED] PENTOBARBITAL, (D5, 98%) 100 UG/ML IN METHANOL  
[REDACTED] PENTOBARBITAL; UNLABELED 1.0 MG/ML IN METHANOL  
[REDACTED] PENTOBARBITAL, (D5, 98%) 1000 UG/ML IN METHANOL

Best Regards,

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, April 06, 2017 9:35 AM  
**To:** [REDACTED]  
**Subject:** Inquiry

I am looking to purchase Pentobarbital CAS # 76-74-4. We would need at least 100 grams to start with. Please let me know if you need any other info and if your organization would be able to and willing to source this material. Thank you.

[REDACTED]

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